

RULEMAKING NOTICE FORM

Notice Number 2017-44	Rule Number Omb 400
1. Agency Name & Address: Dept. of Health and Human Services Office of the Long-term Care Ombudsman 129 Pleasant St, Brown Bldg. Concord, NH 03301	2. RSA Authority: RSA 161-F:13, III 3. Federal Authority: 42 CFR 1321, 1327, 42 USC 3058g 4. Type of Action: Adoption <u> X </u> Amendment <u> </u> Repeal <u> </u> Readoption <u> </u> Readoption w/amendment <u> </u>
5. Short Title: Office of the Long-term Care Ombudsman	

6. (a) Summary of what the rule says and of any proposed amendments:

Omb 400 describes the functions of the Office of the Long-term Care Ombudsman. The former rule expired February 26, 1996. The duties of the Office of the Long-term Care Ombudsman are described with specificity in RSA 161-F:10-19 which holds the requirements under which the office operates and has operated since the rule expired.

The proposed Omb 400 includes updates in areas required by 42 CFR 1327 which was effective in June of 2016. Many of the changes to the rule are in response to a review of the rule and the program by the federal “Administration on Aging-Administration for Community Living.” The proposed rule removes sections in the expired rule that either explained office procedure or repeated requirements and duties clearly stated in statute. New sections were added to the proposed rule in compliance with 42 CFR 1327 including disclosure of information, access to records and referrals when the resident is incapacitated, and safeguards for disclosure of personal identifying information of the resident or the complainant as part of the complaint resolution process.

6. (b) Brief description of the groups affected:

Groups affected include long-term care facility residents and their families, complainants, and long-term care facilities and staff involved in complaints received by the office of the longterm care ombudsman.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

<u>RULE</u>	<u>STATUTE</u>
Omb 401.01	RSA 161-F:10, F:11, 42 USC 3058(f)-(g)
Omb 401.02	RSA 161-F:11, F:42-57
Omb 402.01	RSA 161-F:11, RSA 151, 45 CFR 1327
Omb 403.01	RSA 161-F:13-19, 45 CFR 1327
Omb 403.02	RSA 161-F:13-19
Omb 404.01	RSA 161-F: 10-19, 45 CFR 1327
Omb 405.01	RSA 161-F:13, 14, 45 CFR 1327
Omb 405.02	RSA 161-F:14, 45 CFR 1327

Omb 405.03	RSA 161-F:13
Omb 405.04	RSA 161-F:13
Omb 405.05	RSA 161-F:13
Omb 405.06	RSA 161-F:15, RSA 151:21,VI
Omb 406.01	RSA 161-F:13, and 14
Omb 406.02	RSA 161-F:14, 45 CFR 1327
Omb 407.01	RSA 161-F:13, 14
Omb 408.01	45 CFR 1327
Omb 409.01	RSA 161-F:17
Omb 410.01	RSA 161-F:13
Omb 411.01-Omb 411.02	RSA 161-F:14, 45 CFR 1327

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Catherine Bernhard** Title: **Rules Coordinator**
Address: **Dept. of Health & Human Services** Phone #: **271-9374**
Administrative Rules Unit Fax#: **271-5590**
129 Pleasant Street, Brown Bldg. E-mail: **catherine.bernhard@dhhs.nh.gov**
Concord, NH 03301

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

The proposed rules may be viewed and downloaded at:

<http://www.dhhs.nh.gov/oos/aru/comment.htm>

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Thursday, May 18, 2017**

☒ Fax

☒ E-mail

☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Thursday, May 11, 2017 10:00 AM**

Place: **[DHHS, Brown Bldg., Room 232, 129 Pleasant St., Concord, NH 03301](#)**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # **17:013**, dated **1/23/17**

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

This is not applicable as these rules expired in February 1996.

2. Cite the Federal mandate. Identify the impact of state funds:

The Older Americans Act (42 USC 3058) requires that the establishment and operation of the Office of the Long-Term Care Ombudsman to assist residents of long-term care facilities and their families to protect the health, safety, welfare, and rights of residents of long-term care facilities. 45 CFR Parts 1321 and 1327 have recently been amended to require enforcement of the Older Americans Act. The operating budget for the Office of the Long-Term Care Ombudsman in FY 2017 is \$538,574, of which \$271,647 are state general funds and \$276,927 are federal funds.

3. Cost and benefits of the proposed rule(s):

The proposed rules describe the functions of the Office of the Long-Term Care Ombudsman, which is mandated by federal statute (see 2 above), as well as by RSA 161-F:10. Any cost is therefore attributable to federal law and state statute. There is no cost to the proposed rule nor the expired rule it replaces, therefore there is no difference in cost between the proposed and expired rules.

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

None.

C. To Independently owned businesses:

None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The proposed rule puts back into effect the responsibilities of the expired rule and modifies an existing program or responsibility, but it does not mandate any fees, duties, or expenditures on the political subdivisions of the state, and therefore does not violate Part 1, Article 28-a of the N.H. Constitution.

Adopt Omb 400, previously effective 2/26/90 (Document #4767), and expired 2/26/96, to read as follows:

CHAPTER Omb 400 OFFICE OF THE LONG-TERM CARE OMBUDSMAN

PART Omb 401 PURPOSE AND SCOPE

Statutory Authority: RSA 161-F:10-19, 42 USC 3011, as amended, and
45 CFR 1327

Omb 401.01 Purpose. The purpose of the Office of the long-term care ombudsman is to protect the civil and human rights of persons residing in long-term care facilities, to investigate complaints, to safeguard residents' health, safety, welfare, to enhance their quality of life, and to provide an independent voice for residents in the development and implementation of public policy, rules and laws affecting residents of long-term care facilities.

Omb 401.02 Scope.

These rules affect the residents, staff and long-term care and assisted living facilities including but not limited to: nursing homes, skilled nursing homes, extended care facilities, convalescent homes, homes for the aged, veterans' homes, assisted living facilities and any other residential care facility providing care for the elderly licensed or certified under RSA 151.

PART Omb 402 DEFINITIONS

Omb 402.01 Definitions.

- (a) "Abuse" means "abuse" as defined in RSA 161-F: 43.
- (b) "Adult protection" means the program administered by the department of health and human services that investigates reports of abuse, neglect and exploitation of incapacitated adults and carries out the responsibilities set forth in RSA 161-F:42-57.
- (c) "Bureau of Health Facilities Administration" (BHFA) means the bureau within the department of health and human services responsible for licensing health care facilities in accordance with RSA 151, and conducting surveys of nursing facilities to ensure compliance with Medicaid certification requirements.
- (d) "Case" means each inquiry brought to or initiated by the long-term care ombudsman on behalf of a resident, or group of residents, regarding one or more complaints or problems, which requires the opening of a case file that summarizes the investigation activities of the long-term care ombudsman representative.
- (e) "Certified ombudsman volunteer" means an individual trained and supervised in accordance with Omb 411.01, Omb 411.02.
- (f) "Complainant" means a resident of a facility who reports a complaint, or a person acting for or on behalf of a resident, including but not limited to, a family member, friend, facility, staff member, or representative of a citizen's organization or government agency.

(g) “Complaint” means complaint as defined in RSA 161-F:11, namely, a problem, concern, issue or situation identified or received by the office that is made by, or on behalf of, residents that may adversely affect the health, safety, welfare and rights of residents, including the appointment and activities of legal representatives, providers of long-term care services, public agencies and health and social services agencies.

(h) “Elderly,” means “elderly” as defined in RSA 161-F:11, IV, namely an individual aged 60 or older who is a patient, resident or client of a facility.

(i) “Informed consent” means a written document granting OLTCO permission to share personal identifying information of the resident or the complainant during the complaint, referral or investigative process relating to the complaint.

(j) “Exploitation” means “exploitation” as defined in RSA 161-F: 43, IV.

(k) “Facility” means “facility” as defined in RSA 161-F:11, V.

(l) “Incapacitated” means a resident found to be incapacitated after a hearing and by court order pursuant to RSA 464-A.

(m) “Investigation” means the process described in Omb 405 which is followed to obtain and review thoroughly the facts and circumstances of a complaint.

(n) “Legal representative” means “legal representative” as defined in RSA 161-F:11, VII, namely ‘any individual, duly appointed or designated in the manner required by law to act on behalf of another individual, including:

(a) An attorney;

(b) A guardian or conservator; and

(c) An agent acting pursuant to a power of attorney.

(o) “Long-term care ombudsman,” (LTCO) means “long-term care ombudsman” as defined in RSA 161-F:11, VII.

(p) “Long-term care ombudsman representative,” (LTCOR) means “long-term care ombudsman representative” as defined in RSA 161-F:11, IX.

(q) “Neglect” means “neglect” as defined in RSA 161-F: 43, III.

(r) “Not verified” means a determination following an investigation described in Omb 405, that there was insufficient information to substantiate or prove the complaint by a preponderance of the evidence.

(s) “Office of the Long-Term Care Ombudsman (OLTCO) means “Office” as defined in RSA 161-F:11.

(t) “Personal patient representative” means “personal patient representative” as defined in RSA 151:19, V namely, ‘a person, other than the licensee of, an employee of, or a person having a direct or indirect ownership interest in, a facility, who is designated in writing by a patient or

patient's legal guardian for a specific, limited purpose for the general purpose of assisting the patient in the exercise of any rights.'

(u) "Resident" means an individual living in a long-term care facility.

(v) "Retaliation: means an adverse action taken against a person.

(w) "Verified" means a determination following an investigation described in Omb 405, that there was sufficient information to substantiate or prove the complaint by a preponderance of the evidence.

(x) "Vulnerable" means "vulnerable" as defined in RSA 161-F:64.

(y) "Willful interference" means actions or inactions taken by an individual in an attempt to intentionally prevent, interfere with, or attempt to impede the long-term care ombudsman, or long-term care ombudsman representative from performing any of the duties set forth in RSA 161-F:13-19.

PART Omb 403 COMPLAINT PROCESS

Omb 403.01 Complaint Process.

(a) As authorized by RSA 161-F:10-19 the long-term care ombudsman (LTCO) and long-term care ombudsman representative(s) (LTCOR) shall:

- (1) Elicit, receive, identify, respond to and resolve complaints;
- (2) Investigate complaints as authorized by the "State Long-Term Care Ombudsman Programs" available on-line as described in Appendix A at <http://www.aoa.gov>;
- (3) Document investigations in a case file related to each complaint;
- (4) Document and investigate all complaints regarding facilities;
- (5) Make inquiries and obtain information to fully investigate complaints; and
- (6) Include all complaints in a statewide uniform complaint documentation system, designed, implemented and maintained by OLTCO pursuant to RSA 161-F:17.

(b) Any resident, or complainant making a complaint on behalf of a resident, may report a complaint to the LTCO.

(c) Complaints may be anonymous, if requested.

(d) Complaints may be provided to the Office of the Long-Term Care Ombudsman (Office) or (OLTCO) by:

- (1) Mail or delivery in-person to the following address: Office of the Long-Term Care Ombudsman, Brown Building, 129 Pleasant Street, Concord, NH 03301;
- (2) Telephone: (603) 271-4375 or 1(800) 442-5640;

(3) Fax: (603) 271-5574; or

(4) Email to OLTCO@dhhs.nh.gov.

(e) Personal identifying information of the resident or complainant shall not be shared during the complaint process described in Omb 403.01 unless:

(1) The resident, personal patient representative or legal representative signs a written informed consent to share or refer his or her personal identifying information;

(2) The complainant signs a written informed consent to share or refer his or her personal identifying information;

(3) If the resident is unable to sign the informed consent, the informed consent shall be signed by the personal patient representative or legal representative; unless:

1. The resident communicates through the use of auxiliary aids and services;
2. Orally, visually, or through the use of auxiliary aids and services; and
3. Such consent is documented contemporaneously in writing by the LTCOR;

(4) Disclosure of personal identifying information is required by court order; or

(5) The long term care ombudsman determines there is reasonable cause to believe that disclosure of the personal identifying information of the resident is required due to circumstances set forth in Omb 404.01(f)-(i), Omb 405.01(e), or Omb 406.02, below.

Omb 403.02 Required Information.

(a) When a complaint is filed, the OLTCO shall request the following information:

(1) The complainant's name, address and telephone number;

(2) The resident's:

- a. Name;
- b. Date of birth;
- c. Address, including room number or current location if known; and
- d. The name and contact information for the resident's legal representative, or personal patient representative, if applicable; and
- e. Written informed consent if the complainant or resident wishes to provide consent.

(3) Information related to the complaint(s) reported including but not limited to:

- a. The date and time that the incident or the subject of the complaint occurred;
 - b. A description of what occurred;
 - c. If the complaint is being made by a healthcare facility representative, the name of the person who originally made the report to the facility;
 - d. Contact information for any staff member involved in the incident or situation described by the complaint; and
 - e. Any action the facility has taken or plans to take to respond to the incident or situation described by the complaint.
- (b) Personal identifying information of the complainant or the resident, provided in (a) and (b) above shall be shared only with informed consent as described in Omb 403.01(e) above.
- (c) When a complaint is received, the long-term care ombudsman or long-term care ombudsman representative shall open a case.

PART Omb 404 REFERRAL TO OTHER AGENCIES

Omb 404.01 Referrals.

(a) A complaint shall be referred to any state or federal entity or agency pursuant to RSA 161-F:13 for:

- (1) Regulatory oversight;
- (2) Adult protective services;
- (3) Access to administrative, legal, or other remedies; or
- (4) Law enforcement action.

(b) If a complaint is referred pursuant to (a) above, the LTCOR may disclose personal identifying information of the resident for the purposes of (a) above, without the informed consent as described in Omb 403.01(e) only if:

(1) The resident is unable to communicate informed consent or has not previously given informed consent to the LTCOR to allow referrals or sharing of personal identifying information of the resident relating to the complaint;

(2) The resident has no legal or personal patient representative to give informed consent;

(3) The LTCOR has reasonable cause to believe that an action, inaction or decision is imminent that might adversely affect the health, safety, welfare or rights of the resident;

(4) The LTCOR believes the referral is in the best interest of the resident;

(5) The LTCOR has no evidence indicating that the resident would not wish a referral to be made; and

(6) The LTCOR obtains approval of the LTCO pursuant to an OLTCO procedure for making referrals without informed consent.

(c) The LTCOR shall not disclose personal identifying information of the complainant without informed consent.

(d) The OLTCO and LTCOR are excluded from abuse reporting requirements for incapacitated adult residents pursuant to RSA 161-F:46, including when such reporting would disclose identifying information of a complainant or resident, except as provided in (b) above.

(e) The LTCO shall provide residents, complainants, or resident's personal patient representative or legal representative, with contact information and directions about how to file a complaint with the agencies or entities listed in (a) above.

(f) If the LTCOR personally witnesses suspected abuse, gross neglect or exploitation of a resident the LTCOR shall seek to informed consent from the resident to disclose what the LTCOR witnessed.

(g) Where the resident is unable to communicate informed consent, and has no personal patient representative or legal representative, the LTCOR shall open a case with the LTCOR as the complainant, and follow the complaint procedures in Omb 403.

(h) Under circumstances described in (f) above, and the resident has not communicated informed consent to disclose the resident's personal identifying information has been communicated, the LTCOR shall disclose personal identifying information of the resident to the management of the facility or to the appropriate agency or agencies for substantiation of the abuse, neglect or exploitations, only if:

(1) The LTCOR has no evidence indicating that the resident would not wish a referral to be made;

(2) The LTCO has reasonable cause to believe that disclosure would be in the best interest of the resident; and

(3) The LTCOR obtains approval of the LTCO.

(i) The LTCO shall have reasonable cause to believe that disclosure would be in the best interest of the resident if the conduct or situation observed by the LTCOR presented an imminent threat to the health, safety or well-being of the resident; and

(1) The observations of the LTCOR shall be documented in the case file;

(2) The factors used by the LTCO in making a determinations of reasonable cause are documented in writing in the case file by the LTCO; and

(3) The LTCO has completed, signed and dated a form "Decision Tree Form to Be Determined" (2016) to be included in the case file.

PART Omb 405 INVESTIGATION OF COMPLAINTS

Omb 405.01 Investigations.

(a) Cases and case files shall only be opened if the complaint is described in “State Long-Term Care Ombudsman Programs” available on-line as described in Appendix A at <http://www.aoa.gov>.

(b) During the course of the investigation, the LTCO or LTCO designee shall:

- (1) Personally discuss the complaint with the resident, or if the resident is unable to communicate, with the personal patient representative or legal representative;
- (2) Determine the perspective and wishes of the resident, or if the resident was unable to communicate, determine the perspective and wishes of the resident after discussion with the resident’s personal patient representative or legal representative;
- (3) Obtain informed consent from the resident or the personal patient representative or legal representative in order to share the resident’s personal identifying information pursuant to Omb 403.01(e) during the investigation of the complaint;
- (4) Obtain a detailed statement of the incident or the facts and circumstances of the complaint from the complainant and determine the complainant’s wishes with respect to resolving the complaint;
- (5) Advise the resident, with the assistance of the personal patient representative and legal representative, and work to develop a plan of action in order to resolve the complaint;
- (7) Investigate the complaint by conducting interviews with the complainant, resident(s), facility administrator(s), staff and any other person(s) who may have information relevant to the complaint;
- (8) Obtain written statements if possible, and review information contained in facility records and other records as authorized by RSA 161-F:14 and within Omb 405.03;
- (9) Determine whether the complaint is verified by a preponderance of evidence according to Omb 405.03;
- (10) Determine if complaint is resolved to the satisfaction of the resident, unless the resident is unable to indicate their satisfaction. If the resident is unable to communicate satisfaction will be determined through communication with the personal patient representative, or legal representative as determined by law;
- (11) Notify the resident(s) or the personal patient representative or legal representative of the determination once it is made and disclose the determination to other individuals consistent with Omb 405.04;
- (12) Request a statement describing the incident or situation;
- (13) If the complaint is being made by a healthcare facility representative, a copy of the report completed by the facility; and
- (14) Documentation of statements made by any witness or staff involved.

(d) The case file shall contain the complaint and all information obtained during the investigation unless personal identifying information of the resident or complainant has been excluded pursuant to Omb 403.01.

(e) During the course of the investigation, the LTCO or LTCOR shall only reveal personal identifying information of the resident without informed consent, as authorized by RSA 161-F: 13, II, or Omb 404.01(f)-(i) above.

(f) Pursuant to RSA 161-F:14, when conducting investigations, the long-term care ombudsman and long-term care ombudsman representatives shall be authorized to:

- (1) Enter any facility and visit where the alleged incident or situation took place;
- (2) Communicate privately and without restrictions with any resident who consents to the communication;
- (3) Observe all common areas of the facility, except for the living area of any resident who objects to the observation;
- (4) Conduct announced or unannounced visits during the time of day that the alleged incident or situation was alleged to have taken place.

(g) During the investigation, the long-term care ombudsman, or long-term care ombudsman representative shall interview the resident about the complaint.

(h) If the resident does not wish the office of the long-term care ombudsman to act on a complaint, the long-term care ombudsman or long-term care ombudsman representative shall close the complaint; unless the circumstances described in Omb 404.01(f)-(i) require the LTCO to investigate without informed consent.

(i) If the LTCO determines to act on a complaint as described in Omb 404.01(f)-(i) above, the LTCOR shall notify the resident, the personal patient representative, or legal representative, or if the complainant was not the resident, that the investigation shall continue.

Omb 405.02 Access to Records During an Investigation.

(a) As authorized by RSA 161-F: 14, with informed consent of the resident, the personal patient representative, or the resident's legal representative, the LTCO or LTCOR shall have access to the following:

- (1) All records and logs held at the facility, and any books, files, medical records or other records, including internal reports completed by the facility, that pertain to the resident;
- (2) Licensing and certification for the long-term care facility maintained by the state;
- (3) Records, if needed to complete an investigation or resolve a complaint as authorized by RSA 161-F:14as set forth below:

- a. With written informed consent of the resident, the personal patient representative, or legal representative;
- b. If the resident is unable to communicate informed consent in writing, the resident communicates through the use of auxiliary aids and services;
- c. Orally, visually, or through the use of auxiliary aids and services and such consent is documented contemporaneously in writing by the LTCOR; or
- d. Access to the records is permitted by the Health Insurance Portability Accountability Act (1996) Privacy Rule (HIPAA) 45 CFR 160, 45 CFR 164(A), (E).

(b) The LTCO shall access records without informed consent of the resident, the resident's personal patient representative, or legal representative if the LTCO makes a written determination documenting that the following conditions exist:

1. The resident is unable to give informed consent, and there is no other method of communication or person authorized by the resident to consent to the disclosure of the information or the resident's personal patient representative or legal representative refuses to consent;
2. The personal patient representative or legal representative is the subject of a complaint; and
3. The LTCO provides the written determination to the person in charge at the long term care facility where the resident resides.

(c) If the resident refuses written informed consent or authorization listed in (b) above is not obtained, the LTCO shall not review the medical record; unless one the circumstances described in RSA 161-F:14, II exists.

(d) If related to the investigation in (a) or (c) above, the long-term care ombudsman may request an accounting or other information relating to the fiduciary or financial relationship.

(e) If the information requested in (d) above is not forthcoming within 60 days of the date on the request, the long-term care ombudsman shall seek legal advice and commence all available remedies under the law including but not limited to those remedies available pursuant to RSA 506.7, VIII.

Omb 405.03 Completion of the Investigation and Determinations.

(a) The long-term care ombudsman shall review all information and documentation gathered during the investigation in order to determine whether a complaint is verified by a preponderance of the evidence.

(b) The complaint shall be determined verified if the incident or situation described in the complaint was:

- (1) Observed directly or occurred in the presence of the LTCO or LTCOR;
- (2) Substantiated by a preponderance of the evidence through interviews, records, inspections or other observations of the LTCO or LTCOR;

(3) Documented and verified in the reports of another agency; or

(4) Acknowledged by the subject of the complaint, or facility or facility staff as being accurate.

(c) The complaint shall be determined not verified if after investigation there is insufficient information to substantiate or prove the complaint by a preponderance of the evidence.

(d) The long-term care ombudsman shall record all information regarding the investigation and the basis for the determination that a complaint was verified or not verified in the case file.

(e) The long-term care ombudsman or long-term care ombudsman representative shall make a determination that a complaint is verified or is not verified shall be made after review of all information and documentation obtained during the investigation.

(f) The determination that a complaint is verified or not verified made by the long-term care ombudsman shall be independent of any decision or disciplinary action taken against the individual by any facility, licensing board or other entity.

Omb 405.04 Notice of Determination of Complaint.

(a) When a complaint has been investigated, and a determination made, the long-term care ombudsman shall provide a written notice of the determination if authorized by the resident or other legal representative.

(b) The notice of determination shall be provided to any agency to which the complaint was referred during the investigation if authorized by the resident or his or her legal guardian.

(c) The notice of determination shall be provided to any facility to which the complaint pertained to during the investigation if authorized by the resident or legal representative.

(d) OLTCO determinations shall not be subject to Administrative Appeal Hearings (AAU) pursuant to He-C 200.

Omb 405.05 Complaint Follow-up Visits. The long-term care ombudsman or long-term care ombudsman representative shall make follow-up visits to the facility where the complaint arose as necessary to help ensure that the plan of resolution is being carried out.

Omb 405.06 Retaliation Prohibited.

(a) Pursuant to RSA 161-F:15, RSA 151:21, VI retaliation, or the threat of retaliation, against those who have made reports to the long-term care ombudsman shall be prohibited.

(b) If Staff or volunteers of the office of the long-term care ombudsman who after having investigated or responded to a resident complaint believe has been subjected retaliation or the threat of retaliation related to a complaint, he or she shall immediately contact the long-term care ombudsman.

(c) Any resident, legal representative or family member of a resident's family who has been subjected to retaliation related to a complaint, or to the threat of retaliation, shall immediately contact the long-term care ombudsman.

(d) When the long-term care ombudsman is notified of a situation involving retaliation or the threat of retaliation, by facility staff members against a resident, family member, legal representative or long-term care facility staff member or other person the long-term care ombudsman or his or her designee shall meet with the administrator of the facility where the complaint originated, to discuss the situation.

(e) If the long-term care ombudsman determines that there is reason to believe retaliation occurred, the long-term care ombudsman shall refer the situation to local law enforcement, the county attorney or the department of justice for possible action, in accordance with RSA 161-F:15, I.

(f) Pursuant to RSA 151:21, a resident shall be encouraged and assisted to exercise his or her rights as a resident and as a citizen. The resident may voice grievances and recommend changes in policies and services to facility staff or outside representatives free from restraint, interferences, coercion, discrimination or reprisal.

PART Omb 406 CASE RECORDS

Omb 406.01 Complaint Case Records.

(a) All case records shall be held in a secure location and shall be accessible only to the long-term care ombudsman and long-term care ombudsman representatives pursuant to RSA 161-F:13, II.

(b) All case information related to complaints that are verified shall be retained for 3 years following completion of the investigation or the date of the notice of determination.

(c) All case information related to complaints that are not verified shall be retained for 2 years following the completion of the investigation or the date of the notice of determination.

(d) If a case involves multiple complaints, some of which are verified and some of which are not verified, the case file information shall be retained for 3 years or the date of the notice of determination.

(e) All records of the office of the long-term care ombudsman relating to an investigation or complaint shall be confidential and shall not be disclosed except as provided in Omb 405.11 below.

Omb 406.02 Disclosure of Information or Records.

(a) The long-term care ombudsman shall disclose case records or information about complaints or cases pursuant to RSA 161-F:13, II, if:

- (1) The resident or complainant provides informed consent to disclosing the record;
- (2) A court orders disclosure of written records or notices of the long-term care ombudsman;

(3) The long-term care ombudsman or long-term care representative is court ordered or subpoenaed to testify about the complaint and the investigation in court;

(4) The LTCO or LTCOR is referring a complaint pursuant to Omb 404.01 (d);

(5) Disclosure without informed consent falls within one of the circumstances set out in RSA 163-F:13, 14, or these rules.

(b) When disclosing records or information in (a) above the LTCO or LTCOR shall disclose only that information necessary to accomplish the purpose of the disclosure.

(c) Personal identifying information of the complainant or the resident shall not be disclosed unless:

(1) The resident, the personal patient representative, or legal representative consents to disclosure;

(2) The complainant consents to disclosure;

(3) Disclosure is court ordered or

(4) Disclosure of the personal identifying information of the resident is required under circumstances set forth in Omb 403.01 or Omb 404.01.

(d) The scope of any information disclosed pursuant to a court order shall not exceed the stated purpose of disclosure pursuant to the court order.

PART Omb 407 DELEGATION OF POWERS AND DUTIES

Omb 407.01 Delegation to Long-term Care Ombudsman Representatives.

(a) The LTCO shall delegate the powers and duties of the as described in RSA 161-F:10-19 and in these rules to LTCOR including trained volunteers and staff.

(b) All LTCOR shall:

(1) Successfully complete a training program designed and offered by the long-term care ombudsman; and

(2) Be supervised and provided with ongoing training and technical assistance by the long-term care ombudsman or designee.

PART Omb 408 CONFLICT OF INTEREST

Omb 408.01 Conflict of Interest.

(a) The LTCO shall implement procedures to prevent a conflict of interest between any LTCOR, responding to or investigating a complaint and the subject of the complaint.

(b) In order to avoid a conflict of interest no LTCO, LTCOR, or member of his or her immediate family shall:

- (1) Have a financial, fiduciary, ownership or investment interest in a facility or in a long-term care service;
- (2) Be currently employed at, or participate in, the management of a facility or a long-term care service;
- (3) Be directly employed by or participate in the licensing or certification of a facility or of a provider of long-term care service;
- (4) Be assigned a complaint at a facility in which an immediate family member resides or is employed;
- (5) Be assigned a complaint at a facility in which he or she has been employed within the last year of the beginning employment, student internship, or volunteer involvement with the office of the long-term care ombudsman;
- (7) Receive or have the right to receive, directly or indirectly, remuneration, either in cash or in-kind, under a compensation arrangement with an owner or operator of a facility; or
- (8) Accept gifts or gratuities of significant value from a longterm care facility or its management, a resident, or a resident representative of a longterm care facility in which the longterm care ombudsman or representative provides services;
- (9) Reference the state conflict of interest
- (9) Serve as a resident's agent, medical decision-maker, or in another capacity, which would conflict with the role and responsibilities of the office of the long-term care ombudsman.

(c) Before an individual can be employed by or otherwise serve as a representative of the long-term care ombudsman, LTCO shall discuss any potential conflict of interest as referenced in (b) above with the individual, and shall require:

- (1) The individual to withdraw from the situation that is creating the conflict of interest prior to beginning employment or other involvement with the office;
- (2) Sign a statement "Conflict of Interest" (3/10/09) that he or she has withdrawn from the circumstances that created the conflict of interest and shall not engage in activities which would cause the conflict of interest to return; and
- (3) Maintain a copy of the signed statement as long as the employee or representative is employed or a volunteer with the office.

(d) Each year the office shall require all staff and volunteers to provide a signed, dated statement that indicating that he or she has no conflict of interest that would arise out of a connection to a long-term care facility or an individual who is a resident, or employee of a long-term care facility in New Hampshire.

(e) If a conflict of interest arises for an individual subsequent to employment or volunteer certification, the individual shall notify the LTCO as soon as possible, and the LTCO shall:

- (1) Determine whether or not the situation constitutes a conflict of interest described in (b) above; and
- (2) If a conflict of interest exists, the LTCO shall either:
 - a. Reassign the employee or volunteer to a different area of work that will not generate a conflict of interest; or
 - b. Request that the employee or volunteer either withdraw from the situation that is creating the conflict of interest, or terminate employee or volunteer.

PART Omb 409 REPORTING AND REVIEW

Omb 409.01 Reporting and Review.

(a) The LTCO shall file the National Ombudsman Reporting System (NORS) report, detailing the activities of program during the preceding federal fiscal year, October 1 – September 30, (“Annual Report”) as required by RSA 161-F:17, II and applicable federal law.

(b) After certification by the Administration for Community Living (ACL), the long-term care ombudsman’s annual report shall be available to the general public upon request, and shall be publicized via a press release and published on the Office of the Long-Term Care Ombudsman website <https://www.dhhs.nh.gov/oltco/index.htm>.

PART Omb 410 ADVISORY COMMITTEE

Omb 410.01 Membership.

(a) The long-term care ombudsman shall establish an advisory committee pursuant to RSA 161-F:13, I(c). Members of the advisory committee shall be appointed by the long-term care ombudsman.

(b) The LTCO shall determine the duration of appointment for each member of the advisory committee.

PART Omb 411 CERTIFIED OMBUDSMAN VOLUNTEER PROGRAM TRAINING AND SUPERVISION

Omb 411.01 Volunteers.

(a) The LTCO shall maintain a certified ombudsman volunteer program.

(1) All certified ombudsman volunteer representatives (COVRS) shall serve at the will of the long-term care ombudsman and have authority to represent the office as delineated in RSA 161-F: 12 and RSA 161-F:14 or as directed by the long-term care ombudsman.

(2) All COVRS shall be free of any conflict of interest as and sign a “Conflict of Interest Document” (3/10/09) as required by Omb. 408.01(c).

(3) All COVRS shall be certified after successfully completing an educational and experiential curriculum developed by, or approved by, the long-term care ombudsman.

(b) Authority of the certified ombudsman volunteer representatives and ombudsman volunteer representative shall remain in active status by adhering to the following:

(1) Adherence to all statutes, rules and policies that direct the office of the long-term care ombudsman;

(2) Adherence to the directives of the staff of the office of the long-term care ombudsman authorized to direct the certified ombudsman volunteer representatives; and

(3) Compliance with certified ombudsman volunteer representative program policies and procedures as determined by the long-term care ombudsman including, but not limited, regular supervision, continuing education and submission of required documentation.

Omb 411.02 Training and Supervision.

(a) All COVRS shall be supervised by a staff member who is also a long-term care ombudsman representative.

(b) All COVRS shall meet with a supervisor to review assigned complaints and establish an outline for the investigation.

(c) All COVRS shall successfully complete continuing education training as approved by the long-term care ombudsman.

APPENDIX A

Documents Incorporated by Reference

Rule	Title of Document	Cost and Access to Document
Omb 403.01(a)(2), and Omb 405.01(a)	“State Long-Term Care Ombudsman Programs” 80 FR 7703.	Available on-line at http://www.aoa.gov

APPENDIX B

<u>RULE</u>	<u>STATUTE</u>
Omb 401.01	RSA 161-F:10, F:11, 42 USC 3058(f)-(g)
Omb 401.02	RSA 161-F:11, F:42-57
Omb 402.01	RSA 161-F:11, RSA 151, 45 CFR 1327
Omb 403.01	RSA 161-F:13-19, 45 CFR 1327
Omb 403.02	RSA 161-F:13-19
Omb 404.01	RSA 161-F: 10-19, 45 CFR 1327

Omb 405.01	RSA 161-F:13, 14, 45 CFR 1327
Omb 405.02	RSA 161-F:14, 45 CFR 1327
Omb 405.03	RSA 161-F:13
Omb 405.04	RSA 161-F:13
Omb 405.05	RSA 161-F:13
Omb 405.06	RSA 161-F:15, RSA 151:21, VI
Omb 406.01	RSA 161-F:13, and 14
Omb 406.02	RSA 161-F:14, 45 CFR 1327
Omb 407.01	RSA 161-F:13, 14
Omb 408.01	45 CFR 1327
Omb 409.01	RSA 161-F:17
Omb 410.01	RSA 161-F:13
Omb 411.01-Omb 411.02	RSA 161-F:14, 45 CFR 1327